

41. (A11)

A
SECOND
SPEECH
OF THE
HONOURABLE
NATHANIEL FIENNES,
(second Son to the Right Honour-
able the LORD SAY) in the
Commons House of PAR-
LIAMENT.

36
Touching the Subjects Liberty
against the late Canons, and the
New Oath.



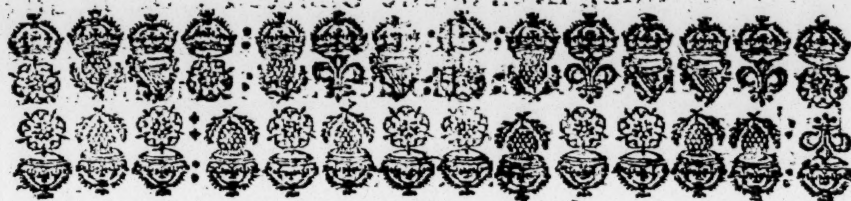
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Mr. Speaker,



OW that wee are about to brand these Canons in respect of the matter contained in them, it is the proper time to open the foulness thereof: and though much of this hath beene anticipated in the generall debate,

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yet if any thing hath beene omitted , or if any thing may be farther cleered in that kinde , it is for the service of the House, that it should now be done.

Sir, I conceive these Canons doe containe sundry matters , which are not onely contrary to the Lawes of this Land , but also destructive of the very principall and fundamentall Lawes of this *Kingdome*. I shall beginne with the first Canon, wherein the framers of these Canons have assumed unto themselves a Parliamentary power, and that too in a very high degree, for they have taken upon them to define what is the power of the King, what the libertie of the Subjects, and what proprietic he hath in his goods. If this be not proper to a Parliament, I know not what is. Nay it is the highest matter that can fall under the consideration of a Parliament, and such a point as wherein they would have walked with more tenderesse and circumspection, then these bold Divines have done. And surely as this was an act of such presumption as no age can parallell, so is it of such dangerous consequence as nothing can be more. For they doe not onely take upon them to determine matters of this nature, but also under great penalties, forbid all Parsons, Vicars, Curats, Readers in Divinitie &c. To speake any other wayes of them then as they had defined, by which Meanes having seised upon all the Condaits, whereby knowledge is conveyed unto the people, how easie would it be for them in time, to undermine the Kings prerogative

prerogative, and to suppress the Subjects liberty, or both.

And now (Sir) I beseech you to consider how they have defined this high and great point: they have dealt with us in matter of Divinity, as the Judges had done before in matter of Law: they first tooke upon them to determine a matter that belonged not to their Judicature, but onely to the Parliament, and after by their judgement they overthrew our propriety, and just so have these Divines dealt with us, they tell us that Kings are an Ordinance of God, of *Divine Right*, and founded in the Prime Lawes of nature, from whence it will follow that all other formes of government, as *Aristocracies*, and *Democracies*, are wicked formes of Government contrary to the Ordinance of God, and the Prime Lawes of nature, which is such new Divinity as I never read in any Booke, but in this new Booke of Canons.

Mr. *Speaker*, We all know that Kings, and States, and Judges, and all Magistrates are the Ordinances of God, but (Sir) give me leave to say they were the Ordinances of men, before they were the Ordinances of God. I know I am upon a great and high point, but I speake by as great and as high a warrant, if Saint *Peter's* chaire cannot erre (as Saint *Peter's* Epistles cannot) thus he teacheth us, *Submit yourselves to every Ordinance of man for the Lords sake, whether it be to the King as supream, or to the Governour, as to him that is sent by him &c.*

(Sir) it is worthie noting, that they are Ordinances of men, but that they are to be submitted unto for the Lords sake, and truly their power is as just, and their subjects alleageance as due unto them, though we suppose them to be first ordinances of men, and then confirmed, and established by Gods Ordinance, as if wee suppose them to be immediate ordinances of God, and so received by men. But there was somewhat in it, that these Divines aimed at, I suppose it was this. If Kings were of *Divine Right*, as the Office of a Pastour, in the Church, or founded in the prime Lawes of Nature, as the power of a Father in a Family; then it would certainly follow, that they should receive the fashion and manner of their government, only from the Prescript of Gods Word, or of the Lawes of Nature, and consequently, if there be no text neither of the *Old* nor *New Testament*, nor yet any Law of nature, that Kings may not make Lawes without *Parliaments*, they may make Lawes without *Parliaments*, and if neither in the *Scripture*, nor in the Law of Nature, Kings be forbidden to lay taxes or any kind of impositions upon their people without consent in *Parliament*, they may doe it out of *Parliament*: and that this was their meaning, they expresse it after in plaine termes, for they say that Subsidies and taxes, and all manner of aides are due unto Kings by the Law of God, and of nature. (Sir) if they bee due by the Law of God and of nature, they are due, though there bee no act of *Parliament* for them, nay (Sir) if they be due by such

such a right, a hundred acts of *Parliaments* cannot take them away, or make them undue. And (Sir) that they meant it of subsidies and aides taken, without consent in *Parliament*, is cleerely that addition, that they subjoyne unto it, that this doth not take away from the subject the propriety hee hath in his goods, for had they spoken of Subsidies and aides given by consent in *Parliament*, this would have beene a very ridiculous addition, for who ever made any question, whether the giving subsidies in *Parliament* did take away from the subject the propriety hee hath in his goods, when as it doth evidently imply they have a propriety in their goods? for they could not give unlesse they had something to give: but because that was alleadged as a chiefe reason against ship-money, and other such illegall payments levied upon the people, without their consent in *Parliament*, that it did deprive them of their right of propriety which they have in their goods, these *Divines* would leeme to make some answer thereunto, but in truth their answer is nothing else but the bare assertion of a contradiction, and it is an easie thing to say a contradiction, but impossible to reconcile it; for certainly if it be a true rule (as it is most true) *quod meum est sine consensu mei, non potest fieri alienum*; to take my goods without my consent must needs destroy my propriety. Another thing in this first Canon, wherein they have assumed unto themselves a *Parliamentary* power, is in that they take upon them to define what is treason, besides
 what

what is determined in the statute of treasons. They say, to set up any coactive independent power is treasonable both against God and the King, the question is not whether it be true they say or noe, but whether they have power to say what is treason, and what not? But now (Sir) that I am upon this point, I would gladly know what kind of power that is, which is exercised by Arch-bishops, Bishops, Deanes, Arch-Deacons, &c. Coactive certainly it is, all the Kingdome feelles the lash thereof, and it must needs bee independent, if it be *jure Divino*, as they hold it, for they doe not meane by an independent power, such a power as doth not depend on God. Besides if their power bee dependant, of whom is it dependent? not of the King, for the Law acknowledgeth no way whereby Ecclesiasticall Jurisdiction can bee derived from his Majestie, but by his commission under the great Seal, which as I am informed, they have not: I speake not of the High Commission, but of that jurisdiction which they exercise in their *Archiepiscopall, Episcopall, Archidiaconall Courts, &c.* and therefore if their owne sentence be just, wee know what they are, and what they have pronounced against themselves. But (Sir) it were worth knowing what they aimed at in that independant coactive power, which they terme popular. I will not take upon mee to unfold their meaning; but we know Doct. Beale had a hand in the making of these Canons, and if we apply his *paraphrase* to the text, it may give us some cleerenesse. I remember

member amongst other notes of his this was one, that we did acknowledge the Kings Supremacy, but would joyne unto him an assistant (*viz.*) the people meaning this House, which being the representative body of the COMMONS of *England*, and claiming as it is so, a share in the Legislative power, Doct. *Beale* calleth this a joyning of an assistant to the King, in whom soly hee placeth the power of making Lawes, and that it is but of grace, that he assumeth either the Lords, or Commons for the making of Lawes with him. Now (Sir) the legislative power is the greatest power, and therefore coercive, and it is the highest power, and therefore independent, and if every Estate for the proportion it hath therein, should not have such a power, it should not have it of right, as founded in the Fabrick and frame, of the policy and government, but of Grace, or by Commission, as Doctor *Beale* affirmeth. I have done with the first Canon, onely I shall adde this, that considering the Principles and positions that are laid downe therein, and comparing them with a clause towards the end of the Canon, that in no case imaginable it is lawfull for Subjects to defend themselves, wee may judge how farre forth these Canons were to prepare mens mindes for the force that was to follow after; if the accusation against my Lord of *Sirafford* be layed aright. For the matter it selfe, I hope there will never be any need to dispute that question, and I doe beleve they had as little need, to have published that position, had it not beene

upon designe. As for the second Canon, therein also they have assumed to themselves a Parliamentarie power, in taking upon them, to appoint Holidayes, whereas the Statute sayth in expresse wordes, that such dayes shall be onely kept as Holy dayes as are named in the Statute, and no other, and therefore though the thing may be *bonum*, yet it was not done *bene*, because not ordained by Parliament, notwithstanding what hath beene alleadged to the contrary: it seemeth to me to be the appoynting of an Holy-day, to set a time apart for Divine Service, and to force men under penalties to leave their labours, and businesse, and to be present at it. And of the same nature is that other clause, in the same Canon, wherein they take upon them without *Parliament*, to lay a charge upon the people, enjoining two Bookes at least for that day, to be bought at the charge of the Parish, for by the same right, that they may lay a penny on the Parish without *Parliament*, they may lay a pound or any greater Summe.

As to the third Canon, I shall passe it over, only the observation that my neighbour of the long Robe made upon it, seemes unto mee so good as that it is worth the repeating, that whereas in the Canon against Sectaries, there is an especiall *proviso*, that it shall not derogate from any Statute, or Law made against them (as if their Canons had any power to disanull an act of *Parliament*) there is no such *Proviso* in this Canon against Papists, from whence it may be probably conjectured, that they

they might have drawne some colour of exemption, from the penall Lawes established against them from this Canon, because it might seeme hard that they should be doubly punished for the same thing, as we know in the point of absence from the Church; the Law provideth, that if any man be first punished by the ordinary, he shall not be punished againe by the Justices.

For the fourth Canon against *Socinianisme*, therein also these Canon-makers have assumed to themselves, a Parliamentary power, in determining an Heresie not determined by Law, which is expressly reserved to the determination of a *Parliament*. It is true, they say it is a complication of many heresies, condemned in the foure first Councells, but they doe not say what those Heresies are, and it is not possible that *Socinianisme* should be formally condemned in those Councells, for it is sprung up but of late, therefore they have taken upon them, to determine and damne a heresie, and that so generally, as that it may be of very dangerous consequence, for condemning *Socinianisme* for an heresie, and not declaring what is *Socinianisme*, it is left in their breasts whom they will judge, and call a *Socinian*. I would not have any thing that I have sayd to be interpreted, as if I had spoken it in favour of *Socinianisme*, which (if it be such as I apprehend it to be) is indeed a most vile and damnable heresie, and therefore the framers of these Canons, are the more too blame in the next Canon against Sectaries, wherein besides that in the pre-

Preamble thereof, they lay it downe for a certain ground, which the holy Synod knew full well; that other Sects (which they extend not onely to *Brownists*, and *Separatists*, but also to all persons; that for the space of a moneth, doe absent themselves without a reasonable cause; from their owne Parish Churches) doe equally endeavour the Subversion of the Discipline, and Doctrine of the Church of *England* with the Papists, although the worst of them doe not beare any proportion, in that respect to the Papists, I say besides that they make them equall in crime, and punishment to the Papists, notwithstanding the great disproportion of their tenents, there is an other passage in this Canon relative, to that against *Socinianisme*, which I shall especially offer to your consideration, and that is this. If a Gentleman comming from beyond Seas should happen to bring over with him a Booke, contrary to the Discipline of the Church of *England*, or should give such a Booke to his friend, nay if any man shall but abett, or maintaine an opinion contrary thereunto, though it were but in *Parliament*, if he thought it fit to be altered, by this Canon hee is excommunicate *ipso facto*, and lyeth under the same consideration, and is lyable to the same punishment; as if he had maintained an opinion against the Deity of CHRIST, and of the Holy Ghost, and of our Justification by the satisfaction of Christ.

(Sir) if in things that are in their owne nature indifferent, if in things disputable, it shall
be

be as heynous to abett or maintaine an opinion, as in the most horrible and monstrous heresies, that can bee imagined, what Liberty is left to us, as Christians? and what Liberty is left to us as men? I proceed to the sixth Canon, wherein these Canonists have assumed to themselves a *Parliamentary* power, and that in a very high degree, in that they have taken upon them to impose new Oathes, upon the Kings Subjects. (Sir) under favour, of what hath been alleaged to the contrary, to impose an Oath, if it bee not an higher power, then to make a Law, it is a power of making a Law of a most high nature, and of higher and farther consequence, then any other Law, and I should much rather chuse that the convocation should have a power to make Lawes, to bind my person and my estate, then that they should have a power to make Oathes to bind my conscience; a Law binds me no longer, then till another Law be made to alter it, but my Oath bindes me as long as I live. Againe, a Law bindes me either to *obedience*, or to *undergoe* the penalty inflicted by the Law, but my Oath bindes me absolutely to *obedience*. And lastly, a Law bindes me no longer, then I am in the Land, or at the farthest no longer, then I am a member of the State, wherein and whereby the Law is made, but my Oath once being taken, doth bind me in all places, and in all conditions so long as I live. Thus much I thought good to speake concerning the power of imposing new Oathes: as to the matter of this new oath, it is wholly illegall.

It is against the Law of this Land; it is against the Law and Light of Nature, it is against the Law of GOD, it is against the Lawes of this KINGDOME; And that, no obscure Lawes, nor concerning any meane, or petty matters. It is against the Law of the Kings Supremacie, in that it maketh Arch-Bishops, Bishops, Deanes, Arch-Deanes, &c. to be *jure Divino*, where-
 (the) Law of this Land hath annexed to the Imperiall Crowne of this Realme, not onely all Ecclesiasticall Jurisdiction, but also all Superiority, over the Ecclesiasticall State; and it is to bee derived from him by Commission under the great Seale, and consequently it is *jure humano*. Against, it is against the Oath of Supremacy, established by Law point blank, for therein I am sworne not onely to consent unto, but also to assist, and to the uttermost of my power, to defend all Jurisdictions, preheminences &c. annexed to the Imperiall Crowne of this Realme, of which this is one (and that which immediately precedeth this Oath in the Statute, and whereunto it doth especially relate) that his Majesty may exercise any Jurisdiction, or Ecclesiasticall government by his Commission under the great Seale directed to such persons, as he shall thinke meet, so that if hee shall thinke other persons meete; then Arch-Bishops, Bishops, &c. I am sworne in the Oath of Supremacy not onely to assent thereunto, but to assist, and to the uttermost of my power defend such an appointment of his Majesty, and in this new Oath I shall sweare never

to consent unto such an alteration. In the like manner it is against the Law, and sight of Nature, that a man should swear to answer, (&c.) to he knowes not what. It is against the Law and light of Nature, that a man should swear never to consent, to alter a thing, that in its owne nature is alterable, and may prove inconvenient, and fit to bee altered. Lastly, it is against the Law of God: for whereas there are three rules prescribed to him that will swear aright, that he *swear in Judgement, in Truth, and righteousness*: hee that shall take this new Oath, must needs breake all these three Rules. He cannot swear in judgement, because this Oath is so full of ambiguities, that he cannot tell what he swears unto; not to speake of the unextricable ambiguity of the &c. there is scarce one word that is not ambiguous in the principall parts of the Oath, as first what is meant by the Church of *England*, whether all the *Christians* in *England*, or whether the *Clergie* onely, or only the *Arch-Bishops, Bishops, Deanes, &c.* or whether the *Convocation*, or what? In like manner it is as doubtfull what is meant by the Discipline, and what by the Doctrine of the *Church of England*, for what some call superstitious Innovations, if others affirme to bee consonant to the Primitive, and that the purest Reformation in the time of *Edward the 6.* and in the beginning of the Reigne of *Queene Elizabeth*, and so for the Doctrine of the *Church of England*, if all the Positions that of later yeares have beene chalenged by some of our Divines to be *Arminian* and *Popish*, and
contrary.

contrary to the Articles of our Religion, and which on the other side have beene asserted and maintained as consonant to the Doctrine of our Church, and the Articles of Religion were gathered together, they might make a pretty volume, nay *Santa Clara* will maintaine it in despite of the *Puritanes*, that the Doctrine of the *Church of Rome*, is the Doctrine of the *Church of England*. Truly it were very fit that we knew, what were the *Doctrine* and *Discipline* of the *Church of England* before we sweare to it, and then (Sir) give me leave to say, that I should bee very loath to sweare to the *Discipline*, or to the *Doctrine* and tenents of the purest Church in the World, as they are collected by them, farther then they agree with the *Holy Scriptures*. Lastly, it is as doubtfull what is meant, by the *Doctrine* and *Discipline* established, and what by altering and consenting to alter, whether that is accompted, or established, which is established by act of *Parliament*, or whether that also that is established, by *Canons*, injunctions &c. and whether it shall not extend to that which is published by our *Divines* with the allowance of authority, and so for consenting to alter whether it be onely meant that a man shall not be active in altering, or whether it extend to any consent, and so that a man shall not submit to it, nor accept of it, being altered by the State. More ambiguities might be shewen, but these are enough to make it cleere, that hee that shall take this Oath cannot sweare in judgement. Nor can he sweare in truth, for
it

it is full of untruthes. It is not true that *Discipline* is necessary to Salvation. It is not true, that *Arch-Bishops, Bishops, Deanes, Arch-Deacons, &c.* are *jure Divino*; as they must needs be, if the Law-makers ought of right to establish them, as they are established, for the Law-makers are not bound as of right, to frame their Lawes to any other then the Lawes of God alone. Now whether *Bishops* be *jure Divino*, we know it is a dispute amongst the *Papists*, and never did any Protestant hold it till of late yeares, but that *Arch-Bishops, Deanes, Arch-Deacons &c.* should be *jure Divino*. I doe not know that ever any Christian held it before, and yet he that taketh this Oath must sweare it. Lastly as he that taketh this Oath cannot sweare in judgement nor in truth, so neither can hee sweare in *righteousnes*, for it is full of *unrighteousnes*, being indeed as hath beene well opened, a Covenant in effect against the King and Kingdome; for if the whole State should find it necessary; to alter the Government by *Arch-Bishops, Bishops &c.* a great part of the Kingdome, especially of the *Gentry* (for not onely the *Clergy*, but all that take degrees in the *Universities* are bound to take it) will be preingaged not to consent to it, or admit of it. Againe it is a great wrong to those that shall bee *Parliament* men, that their freedome shall bee taken away being bound up by an Oath, not to consent to the altering of a thing, which it may bee fit and proper for a *Parliament* to alter. And suppose that for the present it be no hinderance to the service

of God, nor yet burdensome, to the King, and Kingdome, yet if it should prove so hereafter, for a man to bee bound by an Oath never to consent to alter it, may be a great wrong to God in his service, and to the King and Kingdome in their peace and well-fare, and therefore this Oath cannot bee taken in *righteousnesse*. For the other Oath *de parendo iuri Ecclesie*, & *stando mandatis Ecclesie*, though it make lesse noyse then the other, yet is it not of lesse dangerous consequence. If I remember well the Story, this was the Oath that the Pope made King John to take, and when he had sworne *stare mandatis Ecclesie*, the Pope commanded him to resigne his Kingdome to him, and truly be hee Gentleman or Nobleman, or what ever else when hee hath once put his neck into this nouse, his ghostly Fathers may drag him whither they will, for they have the quantity and the quality of the penance in their own breasts, and if they shall enioyne him to give any summe towards the building of a Church, or the adorning of a Chappell, he must pay it, or if they should enioyne him any servile or base action (as there are not wanting examples of that kinde in the time of Popery) they are sworne *stare mandatis Ecclesie*, and so cannot recede, but must performe it. Nay I dare not warrant any man from the rods of Henry the second, or of Raymond of Tholouze; what hath beene done may be done, I am sure the power is the same. And that other Oath also (though more usuall in practise, and more confirmed by these new *Canons*) which is administred

administred to *Church-Wardens*, would be looked into. For it is hardly possible for them that take it not to be forsworne, being they sware to so many particulars, that they cannot mind, and to some that they cannot understand, as how many *Church-Wardens* are there in *England*, that understand what *Socinianisme* is in case they be sworne, to present the offenders against that *Canon*, which concerns that matter. I shall onely adde a word or two concerning two *Canons* more, which seeme to be *Canons* of Reformation. The first is concerning excommunication, to be pronounced onely by a *Divine*, wherein it is alleadged for the framers of these *Canons*, that if they have not more Law on their sides, yet they may seeme to have more reason. For my part, as in all other things, I thinke they have so mended the matter, that they have made it farre worse, for before that which was found fault with was this, that a lay man did that which the grave *Divine* should have done, and now the grave *Divine* must doe what ever the Lay-man would have done, for the cognoscence of the cause, and the power of judicature is wholly in the Lay-man, onely the grave *Divine* is to bee his servant, to execute his Sentences, and hath such a kind of managing the spirituall sword allowed onely unto him, as the *Papists* in some cases were wont to afford unto the civill Magistrate, in respect of the temporall sword, for as if the Civill sword by an implicate faith had beene pinned to the Lawn-sleeves, they condemned men of *Heresie*, and then delivered

them over to the Secular power ; but what to doe? not to have any *cognisance* of the cause, nor to exercise any power of judicature, but onely to bee their excutioners, and to burne the *Hereticke* whom they had condemned, and so they judged men excommunicate, and then the civill power was to send out writtes *de excommunicato capiendo* against them, but one sayd well, that the sword without *cognisance* of the cause, and judgement, was like *Polyphemus* without his eye, it became violence and fury, but being accompanied with the eye of judgement, it is equity and justice: and surely where the spirituall or civill governour is called upon to strike, hee must bee allowed to see and judge whom and wherefore hee strikes, otherwise he will bee able to give but an ill accompt to God, of the managing of the sword, wherewith hee is instructed. The other *Canon* is the last *Canon* against vexatious citations, wherein they seeme to have some sence of the great grievance that poore people lye under, by occasion of vexatious citations, and molestations in *Ecclesiasticall Courts*, and I verily beleieve that there is not a greater oppression in the whole Kingdome upon the poorer sort of people, then that which proceedeth out of these *Courts*. But now (Sir) Let us see what provision they have made against it by this *Canon*. They say because great grievances may fall upon people by citations upon pretence onely, of the breach of that Law without any presentment, or any other just ground, that no citations, grounded onely as
aforesaid,

aforesaid, shall issue out, except it be under the hand and Seale of the *Chancellour*, *Commissary*, *Arch-Dedcon*, or other competent Judge, so that (if there bee any sence in these words) though there bee no presentment at all, nor any other just ground, yet a citation may issue out, soe it be under the hand and Seale of the *Chancellour*, *Commissary*, or other competent Judge, and the party shall not be discharged without paying his fees, nor have any releefe by this *Canon*. But suppose the citation bee not under the hand and Seale of any competent Judge, and that there was neither presentment nor any just ground for it, shall he then be dismissed without paying any fees; no, unlesse first contrary to the Law of nature, there being no presentment, nor just ground of accusation against him, hee shall by his oath purge himselfe of pretended breaches of Law, and then too hee shall only have the fees of the Court remitted, but shall have no satisfaction for his troublesome and chargeable journey, and for the losse of his time, and being drawne away from his affaires. Nay least they should seeme to have beene too liberall of their favour, they adde a *Proviso* in the close of the *Canon*, that this grace of theirs shall not extend to any grievous crime, as *Schisme*, *incontinency*, misbehaviour in the Church, or obstinate inconformity. And what do they call misbehaviour in the Church? if a man doe not kneele at the Confession, or have his hat on, when the Lessons are reading. In like manner what doe they call obstinate inconformity?

If a man will not thinke what they would have him thinke, if a man will not say what they would have him say, if a man will not sweare what they would have him sweare, if a man will not read what they would have him read, if a man will not preach what they would have him preach, if a man will not pray what they would have him pray, In short, if a man will not doe what ever they would have him doe, then hee is an inconformist, and after that they have duely admonished him, *primò*, *secundò*, *tertiò*, all in one breath, then he is contumacious, then hee is an obstinate Inconformist.

Now (Sir) my humble motion is, that in consideration of all the premisses, and what besides hath beene well laid open by others; we should proceed to damme these *Canons*, not onely as contrary to the Lawes of the *Land*, but also as containing sundrie matters, destructive of the right of *Parliaments*, and of the fundamentall and other principall Lawes of this *Kingdome*, and otherwise of very dangerous consequence.

FINIS.

